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8	UNITED STATES O	F AMERICA	
9	NATIONAL LABOR RELATIONS BOARD		
10	REGION 31		
11		NG N at Guarrie	
12	ENCINO HOSPITAL MEDICAL CENTER-PRIME,) Case No. 31-CA-066945	
13	Respondent,		
14	and) SEIU, UNITED HEALTHCARE	
15	CEDATICE EMBLOVEEC INTERNATIONAL LINION) WORKERS – WEST'S) EXCEPTIONS TO THE) ADMINISTRATIVE LAW) JUDGE'S SUPPLEMENTAL	
16	SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS – WEST,		
17	Charging Party.) DECISION)	
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22	SEIU, United Healthcare Workers – West (the "Union" or "UHW") takes the following		
23	exceptions to the Administrative Law Judge's Supplemental Decision issued on May 21, 2013 in		
24	the above-referenced case.		
25	Number Reference to Decision Exception Taken	<u>Γο:</u> -	
26	1. Page 2, fn. 2 The ALJ's footnot	te 2 discrediting Richard Ruppert's (business	
27	agent and negotiator for the Union) testimony that "at a negotiating session on September 22, CEO Bob Bills		
28 DGER & LD	employees had tes	ring before the attorney general, stating that tified against the acquisition of Victor	

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			No.
1			Valley. He said that the license had been denied, and that in his opinion 'he thought that was unfortunate and very sad.""
2	2.	Page 3, fn. 4	The ALJ giving credence to the testimony of Armenia.
4			
5	3.	Page 4, fn. 4	The ALJ giving credence to the testimony of Soto.
6 7	4.	Page 5, fn. 6	The ALJ's footnote 6 discrediting Union Representative Ruppert's testimony to the contrary that the employer applied progressive discipline based on the type of offense.
8	5.	Page 5:10-15	The ALJ giving credence to the testimony of Back concerning progressive discipline while discrediting Ruppert's.
10 11	6.	Page 5	The ALJ's reliance on Back's testimony that "any inappropriate behavior that is unlawful or violates protocol,
12 13			policy, or procedure, or is otherwise impermissible, is considered collectively in the application of the Respondent's progressive discipline system; progressive discipline does not begin anew for each distinct or unrelated type of infraction."
14 15 16	7.	Page 5, fn. 6	The ALJ's failure to credit the testimony of Union Representative Richard Ruppert who testified contrary to Back about the Hospital's application of progressive discipline, despite evidence that the Hospital imposed progressive discipline based on the same type of conduct. (GC Exh.'s 26, 27, 28, 29 & 30.
18 19 20	8.	Page 5, fn. 7	The ALJ's finding and conclusion that "Back, who convincingly attested to her high regard for and insistence upon honesty between her, her HR staff, and other employees, was a forthright witness" and the ALJ's finding and conclusion to "credit her testimony in its entirety."
21 22	9.	Page 5, fn. 7	The ALJ's failure to give credent to the testimony of Aguirre or Ruppert "to the extent that their testimony differs from that of Back."
23 24 25 26	10.	Page 5: 20 – 30	The ALJ's reliance on Back's testimony as follows: "I talked with Erlinda [Roxas] and reviewed the personnel file. My main concern was that Pat's [Aguirre] communication with the HR team, not only the whispering, but the communication using my name as leverage to get confidential information. That was a concern for me because, number one, it's dishonest. Number two, it's trying to manipulate the girls to try and gain
27 28 ger &	11.	Page 6	information that she easily could have come to ask me for. The ALJ's finding, conclusion, and reliance on Back's version of events that "Aguirre, however, disagreed with Ruppert, and
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1			maintained that she has been attempting to assist Arse only as a friend and not as union steward." (emphasis added.)
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3	12.	Pages 5- 6	The ALJ's finding, conclusion, and reliance on Back's version of events that "Ruppert asserted that Back was discharging Aguirre because of union activities, and again Aguirre shook
5		25.	her head and said, 'No, I just wanted to support my friend,'" despite the fact that Ruppert took notes of what was said in that meeting and Aguirre testified that she assisted Arse as a friend
6			and union steward.
7 8	13.	Page 6	The ALJ's finding, conclusion, and reliance on Back's testimony that "as Aguirre merely denied the conversations and offered no credible response to the accusations, or any
9			witnesses, or any excuse or explanation warranting a lesser degree of discipline, there was simply no reason to defer the
10			termination and continue the investigation."
11	14	Page 8	The ALJ's additional facts and analysis consistent with the Board's order remanding finding that Bob Bills "made no such statement" at bargaining concerning the denial of Prime's
12		g ·	attempt to buy Victor Valley Hospital.
13	15.	Page 8- 9	The AI I'm additional facts and analysis finding that "Dynnaut's
14	13.	rage 6-9	The ALJ's additional facts and analysis finding that "Ruppert's testimony" concerning Bills statement at the bargaining session
15	-		regarding Victor Valley Hospital "was not accurate" and the ALJ's discrediting Ruppert's testimony concerning the bargaining session. This is erroneous as Aguirre testified that
16 17			Bills said "something to the effect of it was the Union's fault that Prime lost the sale of – of Victor Valley Community Hospital."
18	16.	Page 8-9	The ALJ's discrediting Ruppert's testimony, chief negotiator,
19		C	because his testimony was not corroborated by Macias, Kenton Smartt, or Pat Aguirre.
20	17.	Page 8	The ALJ's failure to credit the testimony of Aguirre that Bills mentioned the sale of Victor Valley Hospital during bargaining.
21	18.	Page 9	The ALJ's failure to find that Kenton Smartt's testimony
22 23			concerning Bills, specifically that Bills "glanced in the general direction of Pat Aguirre' as he was speaking about the 'Union' spreading untruths" was credible and sufficient to establish that
24			"Bills pointedly directed any remarks to Aguirre."
25	19	Page 9	The ALJ's finding and conclusion that "the evidence is insufficient to show that Bills said or did anything at the
26			September 22 bargaining session that would indicate animus toward Aguirre as distinguished from animus toward the Union.
27	20.	Page 9, fn. 11	The ALJ's finding and conclusion that "there is no predicate in
28 DGER &			the record that would support the inference that Bills was aware - 3 -
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1			that Aguirre had participated in the hearing."
2	21.	Page 10	The ALJ's finding that "[t]here is no showing that either Bills or Back saw the Union's September 20 handbill", concerning
3			Victory Valley Community Hospital which featured a picture of Aguirre with a quote, "or any other handbills posted or
4			distributed by the Union prior to that date. There is no evidence that Bills or Back either posted handbills or entered
5	e		the areas where handbills are posted."
6	22.	Page 1	The ALJ's finding that "[t]he only other handbill posted or distributed by the Union which links Aguirre with her
7			testimony at the attorney general's hearing is the handbill dated August 17, a month earlier. And there is no evidence that
8	=		during that 1-month period any supervisor or manager of the Respondent mentioned that handbill to Aguirre or anyone else."
9	23.	Page 10	The ALJ's conclusion that "the record evidence is insufficient
10			to show that either Bills or Back had seen or read any of the Union's handbills."
11	24.	Page 10	The ALJ's failure to give credence to the testimony of Macias,
12		Union Organizer, that supervisors or managers entered areas of the hospital where handbills are posted.	
13	25.	Page 13	The ALJ's finding that "the record evidence is insufficient to
14 15			show knowledge on the part of either Bills or Back that Aguirre had made a presentation on behalf of the Union at the attorney general's hearing."
16	26.	Pages 13	The ALJ's failure to cite to or consider the testimony of Kenton
17			Smartt, a per diem employee and union steward who testified that he had only handled one grievance during the entire time
18			that he was a steward, including during Back's tenure.
19	27.	Page 13	The ALJ's failure to cite to or consider the testimony of Maggie Macias, Union Representative, regarding Aguirre's
20			union activism and the fact that Cathy Begelford, union
21			steward, had never written or handled her own grievance as a steward during Back's tenure.
22	28.	Page 13	The ALJ's finding that "during Back's tenure Aguirre's interaction with Back regarding grievances was nonexistent" to
23			support a finding that "there is no reason to believe that the degree of animus toward Aguirre was any greater than the
24			degree of animus toward any other union activist."
25	29.		The ALJ's failure to consider that Back had only worked with Aguirre for approximately three months.
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1	30.		The ALJ's failure to cite to or consider testimony of Back on cross-examination that during Back's tenure with the Hospital,
2			Aguirre emailed Back concerning workplace issues and that Aguirre met with other Hospital managers about workplace issues.
4			
5	31.	Page 14	The ALJ's finding and conclusion that "the Respondent has
6 7	=		sustained its burden of proof under <i>Wright Line</i> by demonstrating that Aguirre would have been discharged under the circumstances herein regardless of any animosity it harbored against Aguirre or the Union."
8	32.	Page 17	The ALJ's failure to give credence to GC exhibit memorandum
9			written by Erlinda Rojas who had been asked by Back to provide a written account of her recollection of the disciplinary
10			meeting which states: "The Union representative requested for cross examination of the HR assistants and Barbara said that
11			his was not necessary as the final decision has been made with prior consultations with Barbara's supervisors."
12	33.	Page 18	The ALJ's misconstrued interpretation of Ruppert's testimony
13			concerning what Back said during the disciplinary meeting that "[t]here's not going to be any change to the decision and we're
14			not here to discuss this. I will talk to my supervisors and tell them what you said" to no find pretext.
15	34.	Page 18	The ALJ's arbitrarily giving credence to Ruppert's testimony about what Back said during the disciplinary meeting
16			concerning "not going to be any change to the decision" to support his finding that Back's failure to conduct an
17 18	=		investigation before making the decision to terminate is not pretext, while discrediting all of Ruppert's testimony when it favored the GC and Charging Party's case.
19	35.	Page 21	The ALJ's finding that Back's decision to terminate Aguirre
20			"was not on the substance of the information Aguirre was seeking, but on Aguirre's duplicity."
21	36.	Page 22-23	The ALJ's finding that Aguirre "was not engaging in protected concerted activity in assisting Arse."
22	37.	Page 22 – 23	The ALJ's failure to give credence to Ruppert's assertions that
23		1.00 22 25	Aguirre was terminated for representing Arse in Aguirre's capacity as union steward, and therefore, according to Ruppert,
24			her discharge was in retaliation for union activity.
25	38.		The ALJ's failure to admit into evidence and rejection of Charging Party Exhibit 1, handwritten notes of Richard
26			Ruppert of the disciplinary meeting with Back, Aguirre and Ruppert, which contradict Back's testimony.
27 28	39.		The ALJ's failure to admit into evidence and rejection of Charging Party Exhibit 2, typed notes of Richard Ruppert of
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1		the disciplinary meeting with Back, Aguirre and Ruppert, which contradict Back's testimony.
2	40.	The ALJ's failure to cite to or give any credence to the testimony of Thomas Callahan, Respondent's witness, who
4		testified that discipline and whether to move to the next level depends on the circumstances. Callahan testified that serious
5		situations, such as dangerous situations, would call for more serious discipline, thereby, contradicting Back's testimony concerning progressive discipline.
6	41. Page 24	The ALJ's finding that "[r]egardless of Aguirre's status either
7 8		as a union steward or as Arse's friend and coworker, there is simply no plausible correlation between Aguirre's subterfuge and the obtaining of information regarding the Respondent's
9		attendance at Arse's unemployment appeals hearing that would warrant the Act's protection under <i>Atlantic Steel</i> .
10	42. Page 24	The ALJ's recommendation to dismiss the complaint in its entirety.
11	43. Page 24	The ALJ's conclusion of law that "Respondent has not violated
12		the Act as alleged in the complaint."
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14	Dated: June 18, 2013	
15	Dated. Julie 10, 2013	WEINBERG, ROGER & ROSENFELD
16	le le	A Professional Corporation
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